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IN THE

Supreme Court of the United States

October Term, 1965

No. 843

PAUL GINSBURG, *Petitioner*,

v.

BONN KRAUS GINSBURG and JOHN PAUL GINSBURG, Minors, by their Guardian Ad Litem, BETTY K. GINSBURG, *Respondents.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, AND APPENDIX.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, AND APPENDIX.

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The petitioner, Paul Ginsburg, respectfully prays that a writ of certiorari issue in the above captioned case directed to the United States Court of Appeals for the Ninth Circuit to review its judgment (App. 20) at No. 19892 dated and entered October 15, 1965, erroneously dismissing the Appeal of your Petitioner from the Order of the United States District Court for the District of Arizona at Phoenix, dated and entered December 7, 1964, at No. Civ. 2664 Phx.; and its Order erroneously denying the Petition for Rehearing dated and entered November 9, 1965. (R. 54).

Your petitioner is following herein the caption adopted

by the Court of Appeals for the Ninth Circuit, although it is apparent from the pleadings filed below (and herein) that he then followed the original caption as docketed in the District Court. The attention of the Court of Appeals also was directed to the fact that Bonn Kraus Ginsburg and John Paul Ginsburg are no longer minors, having attained their majority during the past few years; and that the former Betty K. Ginsburg (respondent), through divorces and subsequent marriages, had become Betty K. Hilsdorf and currently Betty K. Meads.

The reason for alleging that the judgment sought to be reviewed erroneously dismissed the wholly meritorious Appeal, is that the Appeal was from an Order of the late Arizona District Judge Dave W. Ling discriminatorily refusing an Affidavit of bias (R. 17) under 28 U.S.C., Section 144, without a hearing; and thereupon, despite his unrecognized automatic disqualification, denying a Motion for Hearing on the Merits of the Unadjudicated Issues of Fraud in Obtaining Change of Venue and the Resultant Lack of Jurisdiction, and the Lack of Consideration for the Alleged Oral Trust, and the Illegality of the Award in Excess of the Interpleaded Fund; and Thereupon Motion for Judgment for the Interpleaded Defendant Because of Lack of Consideration for the Alleged Oral Trust Or, in the Alternative, Motion for Retransfer of the Cause (R. 10).

OPINIONS BELOW

In the United States District Court for the District of Arizona at No. Civ. 2664 Phoenix, the late District Judge Dave W. Ling failed to accompany his Order (R. 33), the subject of the instant appeal, with an opinion, and that Court's Judgment dated and entered December 7, 1964 is not reported.

In the United States Court of Appeals for the Ninth Circuit at No. 19,892 a supposed Opinion (R. 51 and App. 21) was entered October 15, 1965 and the Judgment of that

Court ought to be reviewed herein (App. 20) is not yet reported.

JURISDICTION

The Judgment sought to be reviewed was dated and entered October 15, 1965 (R. 53 and App. 20). The timely Petition for Rehearing was denied on November 9, 1965 (R. 54). The time for filing this petition for writ of certiorari expires, therefore, on February 7, 1966.

The jurisdiction of this Honorable Court is invoked under 28 U.S.C., section 1254(1); and the general supervisory power of this Court over lower Federal Courts.

QUESTIONS PRESENTED

After an obviously biased District Court Judge has refused a litigant's fully supported and self-sustaining Affidavit of bias and prejudice filed pursuant to 28 U.S.C., Section 144, summarily and without a hearing thereon; and then has summarily denied that litigant's Motion for a hearing on the merits of unadjudicated issues, including fraud and the running of interest on an interpleaded fund and lack of jurisdiction, likewise without a hearing; is not an appeal therefrom meritorious when fully and properly perfected under the Federal Rules of Civil Procedure, based upon

(a) the point that the District Judge's removal had become automatic;

(b) the further point that said District Judge was thus disqualified from proceeding any further in the case, with the result that his Order appealed from was actually a nullity;

(c) and the additional points that the litigant had been denied important rights guaranteed under the

Constitution and laws of the United States, and particularly his right to be heard in advance of judgment; and

did not the unsupported, insupportable and otherwise baseless dismissal of the Appeal *sua sponte* by the Court of Appeals

(1) enter a conflict with decisions of other Courts of Appeals on the same matters, and with applicable decisions of this Court; and

(2) constitute such a departure from the accepted and usual course of judicial proceedings, or a sanctioning of such a departure by a District Court, as to call for an exercise of this Honorable Court's power of supervision; and

(3) make this a cause of public importance?

STATEMENT OF THE CASE

The petitioner, Paul Ginsburg, appealed to the Court of Appeals for the Ninth Circuit at No. 19,892 from an Order (R. 33) entered on December 7, 1964 in the Arizona District Court at Phoenix, wherein he was the interpleaded defendant at Civil Action No. 2664 Phx., refusing his Affidavit under 28 U.S.C., sec. 144, for the removal of the late District Judge Dave W. Ling; and denying his Motion for a Hearing on the Merits of Unadjudicated Issues.

The Appeal therein was argued before: CHAMBERS and KOELSCH, Circuit Judges and THOMPSON, District Judge. Before that Court were the Brief for Appellant from which it was quite apparent that the Appeal was entirely meritorious and the Order appealed from should have been reversed; Appellant's Reply Brief which showed beyond doubt that the Brief Of Appellees failed to offer any factual or legal opposition whatever to the Brief For Appellant, and particularly to the seven Specifications of Errors Relied

Upon. Upon the dismissal of the Appeal, your petitioner's Petition for Rehearing therein made it manifest that never before had such conclusions in violation of the Constitution and laws of the United States been sanctioned in United States Courts.

On June 16, 1953 The Mutual Life Insurance Company of New York brought this interpleader proceeding in the United States District Court for the Western District of Pennsylvania at Civil Action No. 11,521, by the filing of a Complaint, allegedly pursuant to 28 U.S.C., sec. 1335. Subsequently the proceeds of two policies of insurance on the life of Samuel A. Ginsburg, brother of petitioner, were paid into the registry of that Court. The said insured had died on April 7, 1953.

It is admitted that on November 26, 1952, the decedent-insured had formally and irrevocably named your petitioner the absolute owner, sole beneficiary, premium payer and possessor of said two life insurance policies by duly executing on that day the insurance company's forms for those purposes. Simultaneously your petitioner paid the premiums thereon, then in the grace period, and also paid the subsequent premiums as they became due until the death of the insured. The said transaction took place in the Phoenix, Arizona, office of The Mutual Life Insurance Company of New York and in due course the original policies of insurance, together with the forms executed by the insured, were forwarded to the Home Office of the insurer to effectuate the endorsements. Thereupon the said original contracts of insurance so endorsed were delivered to your petitioner at his residence, Carlton House, Pittsburgh, Pennsylvania.

The face value of said policies was $30,000.00. The net amount thereof was $27,456.38, which became the original amount of the interpleaded fund.

On or about April 17, 1953, the Pittsburgh Agent of The Mutual Life Insurance Company of New York issued

a receipt to your petitioner for the policies, being surrendered for payment. Subsequently, when the payment was not forthcoming, your petitioner learned that the ex-wife of the decedent-insured and her Phoenix divorce attorney (Samuel Langerman, Esquire) had been communicating with the insurer, framing a claim that the proceeds should be paid to petitioner only as trustee for the two then minors.

Failing in her effort to procure a compromise or nuisance share of the policy from the insurer, and for the sole purpose of advancing a scheme so to do, suit was filed on May 1, 1953, by the decedent's ex-wife, then Betty K. Ginsburg (now Betty K. Meads) in the United States District Court for the District of Arizona at Civ. No. 1882 Phoenix. Named as defendants therein were the insurer and your petitioner, and the claim was that your petitioner be declared a trustee of the proceeds for her two sons, who then were minors, under an alleged oral trust created "at the time" when your petitioner, in writing, was made the absolute owner, sole beneficiary, premium payer and possessor of the policies.

During the course of the interpleader proceedings, Mr. Anderson, the Phoenix agent of the insurer, swore in Depositions that "at the time" (or at any time) of the transaction, there was no mention of any trust and that, if there were, he would have given the decedent-insured different forms to sign; that the only persons then present were the insured, your petitioner, and himself; further that he gave the routine explanation that henceforth the insured could not exercise any rights in the policies, but only his brother, Paul, could, to which the insured (an attorney) replied that he (the insured) knew it and that is the way he wanted it to be; and also that the insured appeared to know exactly what he was doing.

After the said suit was filed in Phoenix, your petitioner on May 11, 1953, to protect his rights, sued The Mutual Life Insurance Company of New York for the proceeds

under his contracts, in the United States District Court for the Southern District of New York at Civil Action No. 8533. Then the insurer interpleaded the fund, over the opposition thereto of your petitioner.

It was evident from the Phoenix Complaint of the then Betty K. Ginsburg, not only that the Arizona District Court lacked jurisdiction over the person of your petitioner and that the Complaint was insupportable and unprovable, but also that the Complaint on its face failed to state a claim upon which relief could be granted against the insurer. In order to avoid this distasteful litigation, petitioner requested the insurer to present a motion to dismiss that Complaint but it refused so to move. Even after your petitioner offered to pay all fees and expenses in connection therewith, the insurer still refused so to move. It should be pointed out here that subsequently your petitioner's Motion to Dismiss said Phoenix Complaint was granted on March 31, 1958, because the Court "has no jurisdiction over his person". The Arizona District Court nevertheless permitted this action to go on trial there after a transfer of the cause from the Western Pennsylvania District.

In a final and vain attempt to avert this interpleader, your petitioner notified the insurer this proceeding was not authorized by the Judicial Code or the applicable law because both claimants alleged that the funds should be paid to Paul Ginsburg. Your petitioner claimed the fund for himself, individually; and his adversary claimed that it should be paid to him as a trustee. All that the insurer had to do, therefore, in order to avoid dual liability, was to issue its check to the order of Paul Ginsburg, individually and/or as trustee. It is elementary that the insurer had no right or duty to go any farther, as to see to the administration of the "trust", *et cetera*.

After the fund was paid into the registry of the Western Pennsylvania District Court, the subsequent proceedings were long and protracted. These respondents devoted

all of their efforts therein to a Motion For Change of Venue supposedly pursuant to 28 U.S.C., sec. 1404(a), the granting of which they were able to procure through perpetrating a fraud upon the Court. The fraud consisted in their falsely representing that they had three other witnesses at Phoenix, Arizona, who could and would testify in support of their alleged oral trust; and further that they could not come to Pittsburgh, Pennsylvania, to prosecute their Complaint because they could not afford the cost and expenses. Through those fraudulent misrepresentations they were granted a change of venue to the Arizona District at Phoenix, where Hon. Dave W. Ling then was the only Federal Judge.

As a result, the petitioner was obliged to travel to Phoenix, Arizona, to defend his valid written contracts against the said framed alleged oral trust. There he retained the law firm of Beer, Seaman & Polley, who represented him at the "trial" before District Judge Ling.

Although the respondents did not even attempt to establish the alleged oral trust which they claimed, or even to prove any of the essential ingredients of a trust, the late Judge Ling nonetheless awarded them the interpleaded fund. That jurist even went further than the law allows in legitimate cases actually, by awarding them interest at the rate of 6% on the interpleaded fund. Furthermore, while that decision was pending on review, the late District Judge Ling ordered the interpleaded fund paid from the Registry of the Court to the attorneys for the respondents, who took approximately 50% thereof for their fees.

While the proceedings were being heard by the late District Judge Ling it became quite evident that these respondents did not have three other such witnesses, and that they could easily have afforded to travel to Pittsburgh to prosecute their Complaint. In addition to (then) Betty K. Ginsburg's reasonably substantial income in Phoenix, it was established that she and her two sons have interests in trust funds at Pittsburgh, Pennsylvania which they currently admit are worth in excess of $600,000.00.

Not only did the late District Judge Ling fail to make any adjudication (as that term is understood in the law)

on the merits of the alleged oral trust issue, but also the jurist did fail to make any adjudication on the merits of any of the other issues involved in this case. It is evident from the Motion For Hearing On The Merits of The Unadjudicated Issues (R. 10-16) that the late District Judge Ling failed to adjudicate the issue of fraud in obtaining change of venue and the resultant lack of jurisdiction in the Arizona District Court, and further the issue of lack of consideration for the alleged oral trust, and, furthermore, the issue of the illegality of the award in excess of the interpleaded fund.

It was these deprivations of the right to due process of law of the interpleaded defendant therein, petitioner herein, which necessitated the filing of the said Motion For Hearing On The Merits of The Unadjudicated Issues. Your petitioner further was justified in filing contemporaneously his Affidavit under 28 U.S.C., sec. 144 (R. 17-22), to bring about the late District Judge Ling's automatic removal from the case by reason of personal bias and prejudice. Pursuant to the Judicial Code, and the legal authorities thereunder, the late District Judge Ling's removal from the case was automatic upon the filing on January 21, 1963, and from then on the jurist "shall proceed no further". Nevertheless, keeping the matter away from qualified judges of that Court and delaying your petitioner's cause for nearly two years, Retired District Judge Ling deliberately returned to preside on December 7, 1964 to refuse the said affidavit of bias and prejudice against him summarily and without a hearing, and to deny summarily and with a hearing, the said Motion For Hearing On The Merits of The Unadjudicated Issues.

In the Court of Appeals before: CHAMBERS and KOELSCH, Circuit Judges and THOMPSON, District Judge, it was readily evident from the Brief For Appellant (pp. 6-8) that said Court should have decided that

A. A Motion For Change of Venue obtained through false representations is void for fraud, with the result that the transferor Court never lost jurisdic-

tion and the transferee Court never acquired jurisdiction.

B. The alleged oral trust agreement failed for lack of consideration.

C. The award of interest on the interpleaded fund in the Registry of the Court is void for illegality.

D. A District Court Judge, when confronted with an affidavit of bias and prejudice pursuant to 28 U.S.C. sec. 144 must first decide whether its factual allegations, assumed to be true, are sufficient to compel his disqualification and, thus effecting his automatic dismissal, "shall proceed no further".

E. A litigant is entitled to a legal adjudication on the merits of the issues presented, in accordance with the Due Process Clause of the Constitution of the United States, as well as the provisions of Canons 19, 20 and 22 of the Canons of Judicial Ethics.

It was therein pointed out that all of those propositions had been raised in the District Court in the said Affidavit pursuant to 28 U.S.C., sec. 144 (R. 17-22) and in the Motion For Hearing On The Merits Of The Unadjudicated Issues (R. 10-16), wherein they were fully supported.

During the course of oral argument in the Court of Appeals, your petitioner seriously advocated that the minimum relief required of them should be an order remanding the cause to the District Court for the essential and mandatory hearing of which he had been unconstitutionally deprived.

Instead of affording your petitioner such minimal relief to which all persons in the United States are entitled, even if not citizens, the said panel of Judges in the Court of Appeals erroneously labeled the wholly meritorious Appeal "as legally frivolous"; then presumptuously dismissed the Appeal; and thereupon voluntarily and without any foundation or basis whatever concluded their "opinion" by trying to ridicule your petitioner for seeking the protection and

enforcement of his property and rights under the Constitution and laws of the United States.

Had the Judges of the Court of Appeals for the Ninth Circuit scrupulously read the Petition for Rehearing, they would readily have been alerted to the procedural and substantive errors committed by the panel who dismissed the Appeal. Thus they would readily have comprehended that their erroneous conclusions had never before been sanctioned or followed by United States Courts, thus becoming disposed to grant the rehearing. Contrarily, however, they summarily denied a rehearing. Hence this Petition.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

1. *The Actions of the Court of Appeals in Entering the Judgment Sought to Be Reviewed Were Discriminatorily Arbitrary, and the Judgment Enters a Conflict With Decisions of Other Courts of Appeals on the Same Matter and With Applicable Decisions of This Court.*

In entering the Judgment sought to be reviewed, the Court of Appeals entered conflicts with decisions of the instant and other Courts of Appeals on the same matters and with applicable decisions of this Court, when it decided:

(A) Not to make an adjudication on the merits of any of the issues properly before it, and sanctioned the same failure in the District Court. See *Williams v. Murdoch, et al.*, (3CCA) 330 F.2d 745, 1964.

(B) To deprive your petitioner of his Federally guaranteed rights to due process of law in both the instant and the prior Appeals, and sanctioned similar deprivations in the District Court, through the misapplication of inapplicable procedural Rules to prevent any hearings or adjudications on the merits. See *Forman v. Davis*, 371 U.S. 178.

(C) Not to declare the Motion For Change Of Venue and the Order of Court granting it void for fraud, with the result that the interpleaded defendant's (Petitioner's) Motion for Retransfer of The Cause should have been granted. It is elementary that, under such circumstances, the transferor Court did not lose jurisdiction and the transferee Court did not acquire judisdiction.

(D) To sanction the District Court's failure to find and conclude that the alleged oral trust, if any, failed for lack of consideration. This proposition is universally axiomatic in all Courts.

(E) To sanction the District Court's erroneous award of interest on the interpleaded fund. The law denying interest on interpleaded funds is universal, and certainly is the law of this Honorable Court and all of the Circuit Courts of Appeals. See the case of *Los Angeles Soap Co. v. United States*, 56 F. Supp. 260 (1944) wherein it was held (p. 262) "The court, therefore, must be deemed to have acted in the light of the usual rule that a payment into court prevents the further running of interest"; and (p. 263) "Plaintiff is entitled to recovery of the entire sum in controversy with the exception of this sum of interest above mentioned." Also, see *Shell Oil Company, a Corporation, Plaintiff, v. M. Carl Jones, et al., Defendants, and the United States of America, Intervenor*, 191 F. Supp. 591 (1961) wherein it was held (pp. 590-591) "The Funds on deposit are sufficient to satisfy the claims of all the claimants. No determination of the priority of claims is necessary and none is made. The awards made herein include interest to date and, the fund in dispute being in custodia legis, no further interest shall accrue thereon. *Bank of China v. Wells Fargo Bank & Union Trust Co.* (1953) 209 F.2d 467, 48 A.L.R. 2d 172; *Los Angeles Soap Co. v. United States*, (D.C. Cal. 1944) 56 F. Supp. 260 reversed on

other grounds (9 Cir.) 153 F. 2d 320, certiorari denied 328 U.S. 848, 66 S. Ct. 1120, 90 L.Ed., 1621."

(F) To sanction the late District Judge Ling's refusal of your Petitioner's Affidavit of bias and prejudice pursuant to 28 U.S.C., Section 144 without a hearing; and not to have declared that jurist disqualified to have passed upon the Motion for Hearing on The Merits of the Unadjudicated Issues. All of the Opinions on this matter entered in this Honorable Court as well as the Circuit Courts of Appeals, support your Petitioner's contention, and it is amazing how many there are. See the cases of *LaBuy v. Howes Leather Co.*, 352 U.S. 249, 254-5; *United States v. Ritter*, 273 F.2d 30, 32 (10 Cir.) cert. den. 362 U.S. 946; *McClellan v. Carland*, 217 U.S. 268, 280; *Ex Parte United States*, 287 U.S. 241, 246. See also the cases of *Berger v. U.S.*, 255 U.S. 22; *Green v. Murphy*, 250 F.2d 591, 593 (1st Cir. 1958); *cf.* also *Albert v. U.S. Dist. Court for Western Dist. of Mich.*, 283 F.2d 61 (6th Cir. 1960); *United States v. Onan*, 190 F.2d 1 (8th Cir. 1951); *Tucker v. Kerner*, 186 F.2d 79 (7th Cir. 1959); *Eisler v. U.S.*, 170 F.2d 273 (D.C. Cir. 1948).

In *Berger v. U.S., supra*, this Honorable Court gave definitive construction to 28 U.S.C., sec. 144. It held that when confronted with an affidavit of bias the presiding trial judge must decide whether its factual allegations, assumed to be true, are "sufficient" to compel his disqualification, i.e., whether they imply personal bias against the affiant. He must not inquire into the accuracy of the factual allegations at all, but simply determine whether they ". . . show the objectionable inclination or disposition of the judge . . ." If so, he has a duty to recuse himself.

It seems that the most recent case on this point in this Honorable Court involves the Petition For A Writ To The United States Court Of Appeals For The

Tenth Circuit in the case of *Honorable Stephen S. Chandler, United States District Judge For The Westtern District Of Oklahoma, Petitioner, v. Occidental Petroleum Corporation, Respondent.* In that case Judge Chandler sought a review of one of the most bitter contests ever involving Section 144 of the Judicial Code. This Honorable Court nonetheless denied the jurist's Petition For A Writ Of Certiorari, 372 U.S. 915, and at the same time denied his Motion To Strike The Respondent's Brief. This Honorable Court also denied the Petition For Rehearing, 373 U.S. 906.

The foregoing authorities justify the argument that the late District Judge Ling should have recused himself, and thereupon permitted the Motion For Hearing On The Merits Of The Unadjudicated Issues to be assigned to a qualified judge of that District Court.

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2. *The Actions of the Court of Appeals in Entering the Judgment Sought to Be Reviewed Constituted Such a Departure from the Accepted and Usual Course of Judicial Proceedings, or a Sanctioning of Such a Departure by the District Court, as to Call for an Exercise of This Court's Power of Supervision.*

The accepted and required course of judicial proceedings necessitates a showing that the litigants have received the protection and enforcement of their rights to due process of law, including and especially the right to be heard in advance of judgment, and that the Courts have accompanied the judgments entered by them with opinions that comply with and conform to the applicable provisions of the Canons of Judicial Ethics.

On Page 273 of Legal Ethics by Henry S. Drinker in the discussion of the Canons of Judicial Ethics, is the following: "Canons 19 and 20 discuss the principles to be observed in the preparation of decisions and written opinions. Counsel are entitled, it is pointed out, to a reasoned

discussion of points seriously argued; questions which will arise in a new trial should be settled; decisions should be succinct as the case demands, and should be directed to the constructive development of the law rather than to the enhancement of the judge's individual reputation . . . Canon 22 emphasizes the duty to secure to defeated counsel a full review on a fair record". It is provided therein that the purpose of these principles is to keep the Judge's decisions above suspicion.

The principal point of this argument is that your Petitioner would necessarily have been the successful litigant in the lower courts, had the late District Court Judge Ling proceeded in line with the accepted and required course of judicial proceedings. In other words, if Judge Ling had entered accompanying opinions showing that he gave full consideration to all of the issues involved and the arguments of counsel in support thereof, concluding with legal support for his determinations, even he would have had to adjudicate the issues in favor of the interpleaded defendant therein, Petitioner herein.

Your Petitioner respectfully suggests that if this Honorable Court considers his advocacies as being unduly critical, it accept them in the professional spirit in which they are made and be guided by a pertinent statement heretofore made by the late Honorable Harlan Fiske Stone, when he declared, "I have no patience with the complaint that criticism of judicial action involves any lack of respect for the courts. When the courts deal, as ours do, with great public questions, the only protection against unwise decisions, and even usurpation, is careful scrutiny of their action and fearless comment upon it".

It is evident from the Record that the Court of Appeals, being cognizant of the District Court's departure from the accepted and required course of judicial proceedings, sanctioned it and then did likewise. It necessarily follows, under such circumstances, that the actions of the lower courts call for an exercise of this Honorable Court's power of supervision.

Your Petitioner is justified in making this argument not only because it has full and complete Record support, but also because your Petitioner would have become the successful appellant in the Court of Appeals, had that Court not departed from the accepted and usual course of judicial proceedings.

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3. *The Unauthorized Actions by the Lower Courts, With Complete Indifference to the Federal Rules of Civil Procedure and the Law Applicable Thereto, Patently Ignoring All Applicable Guaranteed Provisions Under the Constitution and Laws of the United States Relating to Due Process of Law and the Sanctity of Contracts, Inviting a Coast to Coast Racket Disrespecting Insurance Policies and Trust Funds, Has Rendered This a Cause of Public Importance Affecting Not Your Petitioner Alone But the Federally Guaranteed Rights of All Persons.*

From the inception of this interpleader proceeding, every statutory provision, procedural Rule, and the applicable law have been discriminatorily violated.

In the first place, the interpleading plaintiff had no right under the interpleader statute to pay the proceeds of the insurance policies into the Registry of the Court, because both claimants alleged that the funds should be paid to your Petitioner, Paul Ginsburg. Your Petitioner claimed the fund for himself, individually; and his adversary claimed that it should be paid to him as a trustee. All that the insurer had to do, therefore, in order to avoid dual liability, was to issue its check to the order of Paul Ginsburg, individually and/or as trustee. It is elementary that the insurer had no right or duty to go any farther, as to see to the administration of the "trust", *et cetera*.

In the second place, the transfer of the cause from the Western Pennsylvania District to the Phoenix, Arizona District, pursuant to a Motion for Change of Venue, pur-

portedly under 28 U.S.C., sec. 1404(a), was obtained through fraud upon the Court, as well as through fraud upon your petitioner.

This Honorable Court has often stressed why no Court should house a single fraud. In the case of *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 332 U. S. 238, rehearing denied 332 U. S. 772, Mr. Justice Black, who delivered the Opinion of the Court, discussing the issue of the fraud perpetrated therein, stated (246) "This matter does not concern only private parties . . . Furthermore, tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society."

In the third place, the said fraud was not discoverable prior to the trial at Phoenix wherein it was made quite evident. The late District Judge Ling, however sanctioned that fraud, and refused to retransfer the cause to the transferor Court, where your Petitioner could have had a fair trial in his own vicinage.

In the fourth place, the late Judge Ling entered a Judgment against your Petitioner without a scintilla of evidence to support it and under such circumstances as to manifest his bias and prejudice against your Petitioner. Through that Judgment, the jurist upheld an unproved and unprovable *alleged oral agreement* unsupported by any consideration against a proved *written agreement*, establishing the fact that your Petitioner was and is the absolute owner, sole beneficiary, premium payer and possessor (until his insurance contracts were surrendered for payment) of the life insurance policies involved.

In the fifth place, that Judgment entered by the late Judge Ling not only constituted an unlawful award of the interpleaded proceeds of your Petitioner's life insurance contracts, but also an unprecedented and illegal affirmative judgment against your Petitioner for interest currently

approximating $20,000.00. These respondents have been prosecuting the said fraudulent surplusage judgment against your Petitioner in his domiciliary Third Circuit, where he has been and is being deprived of his constitutional and legal right to assert the same defenses as could be asserted in the Ninth Circuit.

In view of the foregoing, it is obvious that your Petitioner has been so victimized between the Third and Ninth Circuits that he is justified to invoke the protection of this Honorable Court's pronouncements in the case of *U.S. v. International Building Co.*, 345 U.S. 502, 506, wherein it was stated, "But unless we can say that they were an adjudication on the merits, the doctrine of estoppel by judgment would serve an unjust cause: it would become a device by which a decision not shown to be on the merits would forever foreclose inquiry into the merits. Estoppel by judgment includes matters in a second proceeding which were actually presented and determined in an earlier suit. See *Commissioner v. Sunnen, supra*, at 598".

If all of these deprivations of due process of law, and of property and other rights guaranteed under the Constitution and the laws of the United States, are permitted to remain unreversed because of the lower Courts' refusals to cleanse the fraud and correct the patent errors, then and in that event your petitioner is justified in arguing that the same injustices could be inflicted upon all persons in the United States of America. Thus, anyone will be able to appear before Judges (who are inclined to do so) and successfully assert false and unprovable claims against the proceeds of insurance policies, trust and estate funds, and practically any other property, leading to a coast to coast racket. Your Petitioner is justified in further arguing that if such a thing can happen to him, it can happen to anybody.

Your Petitioner's adversaries have never come for-

ward with an explanation of why he would have entered into a trust arrangement for the benefit of these respondents, who are wealthy without these insurance proceeds, together with interest thereon. It is apparent from the Record below, that your Petitioner originally accepted these life insurance contracts only for himself individually. Any different arrangement, such as the instant alleged oral trust, would have resulted in his rejection of these insurance contracts and complete freedom from this spurious and distasteful litigation.

WHEREFORE, your Petitioner respectfully prays that his Petition will be granted.

Respectfully submitted,

PAUL GINSBURG,
Counsel for Petitioner
Carlton House, 550 Grant Street
Pittsburgh, Pennsylvania 15219

APPENDIX

JUDGMENT

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 19,892

PAUL GINSBURG, Appellant,

vs.

BONN KRAUS GINSBURG AND JOHN PAUL GINSBURG, MINORS, BY THEIR GURDIAN AD LITEM, BETTY K. GINSBURG, Appellees

APPEAL from the United States District Court for the District of Arizona.

THIS COUSE came on to be heard on the Transcript of the Record from the United States District Court for the District of Arizona, and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the appeal in this Cause be, and hereby is dismissed.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 19,892

PAUL GINSBURG, Appellant,

vs.

BONN KRAUS GINSBURG AND JOHN PAUL GINSBURG, MINORS, BY THEIR GUARDIAN AD LITEM, BETTY K. GINSBURG, Appellees

[October 15, 1965]

On Appeal from the United States District Court for the District of Arizona

Before: CHAMBERS and KOELSCH, Circuit Judges and THOMPSON, District Judge.

CHAMBERS, Circuit Judge:

The appeal is dismissed as legally frivolous.

Appellant was interpleaded in a district court case. Too late, he attempted an appeal, our number 16,768. It was here dismissed on May 9, 1960. Certiorari was denied by the Supreme Court, Ginsburg v. Ginsburg, 364 U.S. 934 (1961).

He then sought a hearing in the district court on what he claimed were the unadjudicated issues left after the original judgment. Also, he attempted to disqualify the district judge. In one order, the district judge refused to disqualify himself and declined to proceed on the "unadjudicated issues." From that order this appeal was taken.

We find the claimed "unadjudicated issues" to be a melange of points that defendant might have asserted here on appeal after the original judgment if the first appeal

had been timely. For all of this, it is too late after the district court judgment became final.

We have carefully searched the record to see if there is any reason for the application of Rule 54(b) of the Rules of Civil Procedure and find there is not.

We decline to consider the matter of the district judge's disqualification (an issue made by appellant after having his case decided against him) when we find there was no merit to the motion for hearing on unadjudicated issues. (The trial judge died after ruling on appellant's motions.)

We reject appellees' application for attorney fees, although appellant is pushing the limit he can go without such fees being assessed. Another reason for rejecting the fees is that appellees have not been particularly helpful in the present phase of the case, apparently taking the view that we should just take judicial notice that appellant is a bother.

Appellant, representing others, is undoubtedly a highly competent and tenacious lawyer. Here, in representing himself, he proves a well-known axiom.